

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ESTATE OF MYRA FIELDS, by	:	
TYZA FRENCH, ADMINISTRATOR	:	
	:	
Plaintiff,	:	
	:	
v.	:	CIVIL ACTION
	:	
	:	NO. 99-CV-4261
PROVIDENT LIFE AND ACCIDENT	:	
INSURANCE COMPANY	:	
and	:	
ADS ALLIANCE DATA SYSTEMS, INC.	:	
	:	
Defendants.	:	

**MEMORANDUM**

BUCKWALTER, J.

December 22, 1999

Presently before the Court is Defendant Provident Life and Accident Insurance Company's ("Provident" ) Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6). For reasons stated below, the Motion is Granted.

**I. FACTUAL BACKGROUND**

The Estate of Myra Fields ("Plaintiff"), by its Administrator, Tyza French ("French"), brings this action pursuant to 29 U.S.C. § 1001 et. seq., Employee Retirement Income Security Program ("ERISA") in order to recover certain life insurance benefits. Myra Fields died intestate in Philadelphia, Pennsylvania on September 29, 1998. On May 20, 1999, Fields' son, Tyza French, was appointed administrator of her estate. The Plaintiff claims certain life insurance benefits from an insurance policy that Myra Fields was entitled to as a result of her

employment with ADS Alliance Data Systems, Inc. (“Alliance”). French alleges that he repeatedly requested information from Alliance and Provident (together “Defendants”), concerning the benefits due the estate under the policy. However, neither Defendant was forthcoming with the requested information. Alliance is considered the plan administrator (“Administrator”), and sponsor of the life insurance proceeds to which Plaintiffs lay claim. Provident is the Claims Fiduciary. Plaintiff claims that both Defendants have violated 29 U.S.C. §§ 1132(a)(1)(A)-(B). The present motion seeks to dismiss the Plaintiff’s §1132(a)(1)(A) claim against Defendant Provident.

## **II. LEGAL STANDARD**

When deciding to dismiss a claim pursuant to Rule 12(b)(6) a court must consider the legal sufficiency of the complaint and dismissal is appropriate only if it is clear that "beyond a doubt ... the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." McCann v. Catholic Health Initiative, 1998 WL 575259 at \*1 (E.D. Pa. Sep. 8, 1998) (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)). The court assumes the truth of plaintiff's allegations, and draws all favorable inferences therefrom. See, Rocks v. City of Philadelphia, 868 F.2d. 644, 645 (3d. Cir. 1989). However, conclusory allegations that fail to give a defendant notice of the material elements of a claim are insufficient. See Sterling v. SEPTA, 897 F.Supp. 893, 895 (E.D. Pa.1995). The pleader must provide sufficient information to outline the elements of the claim, or to permit inferences to be drawn that these elements exist. Kost v. Kozakiewicz, 1 F.3d 176, 183 (3d. Cir. 1993).

### III. DISCUSSION

Plaintiff is seeking relief under § 1132(a)(1)(A) which provides that a civil action may be brought by a beneficiary for the relief provided in subsection 1132(c)<sup>1</sup>. 1132(c) generally holds an Administrator liable for a failure to timely provide a participant or beneficiary with information requested concerning the plan. Provident's argument is that it can not be liable under § 1132(a)(1)(A) as it is not an Administrator as defined by the plan<sup>2</sup>.

It is uncontroverted that Provident is not the Administrator under the instrument that created the plan. Alliance was clearly named as Administrator. If it had not been so named, Alliance would still have become the Administrator under the statute since it is the plan sponsor/employer. The statutory scheme strongly suggests that Congress intended one party, the Administrator, to be liable for a failure to timely deliver information regarding the plan to

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<sup>1</sup> 29 U.S.C. § 1132(c) provides: Any administrator (A) who fails to meet the requirements of paragraph (1) or (4) of section 1166 of this title or section 1021(e)(1) of this title with respect to a participant or beneficiary, or (B) who fails or refuses to comply with a request for any information which such administrator is required by this subchapter to furnish to a participant or beneficiary (unless such failure or refusal results from matters reasonably beyond the control of the administrator) by mailing the material requested to the last known address of the requesting participant or beneficiary within 30 days after such request may in the court's discretion be personally liable to such participant or beneficiary in the amount of up to \$100 a day from the date of such failure or refusal, and the court may in its discretion order such other relief as it deems proper.

<sup>2</sup> 29 U.S.C. § 1002(16)(A) The term "**administrator**" means--  
(i) the person specifically so designated by the terms of the instrument under which the plan is operated;  
(ii) if an administrator is not so designated, the plan sponsor; or  
(iii) in the case of a plan for which an administrator is not designated and a plan sponsor cannot be identified, such other person as the Secretary may by regulation prescribe.

29 U.S.C. § 1002(16)(B) The term "**plan sponsor**" means (i) the employer in the case of an employee benefit plan established or maintained by a single employer, (ii) the employee organization in the case of a plan established or maintained by an employee organization,

29 U.S.C. § 1002(21) a person is a **fiduciary** with respect to a plan to the extent (i) he exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets, (ii) he renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or (iii) he has any discretionary authority or discretionary responsibility in the administration of such plan.

beneficiaries. The Ninth Circuit has held that an insurance company which participated in an ERISA plan, but was not an "Administrator" within meaning of the statute, could not be held liable under § 1132(c) for its failure to provide plan documents upon request, notwithstanding an earlier mistaken statement by company's claims supervisor that it was the plan's Administrator. See Moran v. Aetna Life Ins. Co., 872 F.2d 296 (9th Cir. 1989); Reinert v. Giorgio Foods, Inc., 1997 U.S. Dist. LEXIS 9090 (E.D. Pa. 1997). Following the guidance of the Supreme Court, the Court is "reluctant to tamper with an enforcement scheme crafted with such evident care as the one in ERISA." Mass. Mutual Life Ins. Co. v. Russell, 473 U.S. 134, 147, (1985).

The Plaintiff relies on a First Circuit opinion holding that a party other than the Administrator can be liable under §1132(c). See Law v. Ernst & Young, 956 F.2d 364 (1st Cir. 1992) (liability may attach for failing to timely furnish information when party assumes administrative functions of the plan). However, this Court finds that the weight of authority follows the reasoning of the Moran Court. As the 10th Circuit stated, "The statutory language is clear and unambiguous, and admits of no other interpretation" McKinsey v. Sentry, Ins., 986 F.2d 401, 404-405 (10th Cir. 1993) (finding plaintiff failed to state claim under §1132(c) against a party who did not meet statutory meaning of Plan Administrator). This is not one of those "rare cases [in which] the literal application of a statute will produce a result demonstrably at odds with the intentions of its drafters." Griffin v. Oceanic Contractors, Inc., 458 U.S. 564, 571 (1982).

#### **IV. CONCLUSION**

The Court finds that 1132(c) was intentionally crafted so that the Plan Administrator would be responsible for providing beneficiaries and participants with information concerning any ERISA plan and liable if it failed to timely do so. Since Provident can not meet the definition of Administrator under §1002(16), it can not be liable under §1132(c). Therefore, Provident's Motion is Granted.

An appropriate Order follows.

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ADS ALLIANCE DATA SYSTEMS, INC.	:	
	:	
Defendants.	:	

**ORDER**

AND NOW, this 22nd day of December, 1999, upon consideration of the Defendant Provident Life and Accident Insurance Company's Motion to Dismiss (Docket No. 3), and the Plaintiff's Response thereto (Docket No. 4), it is hereby **ORDERED** that the Motion is **GRANTED**, and Count II of Plaintiff's Complaint is dismissed as to Defendant Provident.

BY THE COURT:

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RONALD L. BUCKWALTER, J.